



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 29, 1996

Mr. Gilbert Kissling
Administrator
State Board of Plumbing Examiners
929 East 41st Street
Austin, Texas 78765

Letter Opinion No. 96-112

Re: Whether the class C misdemeanor penalty set forth in subsection (c) of section 14 of the Plumbing License Law, V.T.C.S. art. 6243-101, is limited to offenses under subsection (a) (ID# 38780)

Dear Mr. Kissling:

On behalf of the State Board of Plumbing Examiners, you ask about the proper interpretation of section 14 of the Plumbing License Law, V.T.C.S. art. 6243-101. In 1993, the legislature passed two acts amending section 14. The first enacted amendment provided that an offense under "[s]ubsection (a) of this section" is a class C misdemeanor; the later enacted amendment provided that an offense under "this section" is a class C misdemeanor. You suggest that section 14 as it now appears in Vernon's Texas Civil Statutes -- which provides that an offense under "[s]ubsection (a) of this section" is a class C misdemeanor -- does not correctly reflect legislative intent. We agree.

Senate Bill 813, enacted on May 11, 1993, provided in pertinent part as follows:

Section 14, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) No person, whether as a master plumber, journeyman plumber, or otherwise, shall engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act. It shall be unlawful for any person, firm, or corporation to engage in or work at the business of installing plumbing and doing plumbing work except as specifically herein provided unless such installation of plumbing or plumbing work be under the supervision and control of a plumber licensed under this Act. *A license holder may not act as a water supply protection specialist unless the license holder has the appropriate license endorsement under section 11A or 11B of this Act.*

(b) An offense under *Subsection (a)* of this section is a Class C misdemeanor [~~as defined by the Penal Code~~].

(c) In addition to any other action, proceeding, or remedy authorized by law, the Board may institute an action in its own name against any person to enjoin any violation of this Act or any rule of the Board. In order for the Board to sustain the action, it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation of this Act or a Board rule. Any party to the action may appeal the cause. The Board may not be required to give any appeal bond in any cause arising under this Act. The attorney general shall represent the Board in all actions and proceedings to enforce this Act.

(d) A field representative or, within the jurisdiction of that municipality, a municipal plumbing inspector, may issue a citation to a person who engages in conduct described by Subsection (e) of Section 9 of this Act.

Act of May 11, 1993, 73d Leg., R.S., ch. 272, § 4, 1993 Tex. Gen. Laws 1276, 1278.

House Bill 740, enacted on May 22, 1993, provided in pertinent part as follows:

Section 14, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (c), and (d) and adding Subsection (e) to read as follows:

(b) A person may not install pipe used solely to transport gases for medical purposes unless the person is licensed as a master plumber or journeyman plumber under this Act and holds an endorsement issued under Section 8C of this Act. This endorsement will coincide with the rules and regulations adopted by the Texas Department of Health.

(c) An offense under this section is a Class C misdemeanor [~~as defined by the Penal Code~~].

(d) [(e)] In addition to any other action, proceeding, or remedy authorized by law, the Board may institute an action in its own name against any person to enjoin any violation of this Act or any rule of the Board. In order for the Board to sustain the action, it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation of this Act or a Board rule. Any party to the action may appeal the cause. The Board may not be required

to give any appeal bond in any cause arising under this Act. The attorney general shall represent the Board in all actions and proceedings to enforce this Act.

(e) [(d)] A field representative or, within the jurisdiction of that municipality, a municipal plumbing inspector *or water district plumbing inspector*, may issue a citation to a person who engages in conduct described by Subsection (e) of Section 9 of this Act.

Act of May 22, 1993, 73d Leg., R.S., ch. 535, § 3, 1993 Tex. Gen. Laws 2015, 2016.

Section 14 now appears in Vernon's Texas Civil Statutes as follows:

Sec. 14. (a) No person, whether as a master plumber, journeyman plumber, or otherwise, shall engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act. It shall be unlawful for any person, firm, or corporation to engage in or work at the business of installing plumbing and doing plumbing work except as specifically herein provided unless such installation of plumbing or plumbing work be under the supervision and control of a plumber licensed under this Act. A license holder may not act as a water supply protection specialist unless the license holder has the appropriate license endorsement under Section 11A or 11B of this Act.

(b) A person may not install pipe used solely to transport gases for medical purposes unless the person is licensed as a master plumber or journeyman plumber under this Act and holds an endorsement issued under Section 8C of this Act. This endorsement will coincide with the rules and regulations adopted by the Texas Department of Health.

(c) An offense under Subsection (a) of this section is a Class C misdemeanor.

(d) In addition to any other action, proceeding, or remedy authorized by law, the Board may institute an action in its own name against any person to enjoin any violation of this Act or any rule of the Board. In order for the Board to sustain the action, it is necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation of this Act or a Board rule. Any party to the action may appeal the cause. The Board may not be required to give any appeal bond in any cause arising under this Act. The

attorney general shall represent the Board in all actions and proceedings to enforce this Act.

(e) A field representative or, within the jurisdiction of that municipality, a municipal plumbing inspector or water district plumbing inspector, may issue a citation to a person who engages in conduct described by Subsection (e) of Section 9 of this Act.

(f) A person, corporation, or other entity may not sell, donate, or transfer a water closet plumbing fixture or other equipment that uses water that does not comply with a state-approved plumbing code and that may permit the backflow of nonpotable substances into the potable water supply. The board shall adopt rules under this subsection that include a list describing the types of plumbing fixtures to which this subsection applies.¹

V.T.C.S. art. 6243-101, § 14 (Vernon Supp. 1996) (footnote added).

We agree that subsection (c) of section 14 as it now appears in Vernon's Texas Civil Statutes does not correctly reflect legislative intent for the following reasons. Senate Bill 813 amended subsection (a) to add additional prohibited conduct and amended subsection (b) to change "[a]n offense under this section" to "[a]n offense under *Subsection (a)* of this section." Because only subsection (a) described prohibited conduct, Senate Bill 813's change to subsection (b) was not intended to exclude certain conduct from punishment as a class C misdemeanor. House Bill 740 amended section 14 by inserting additional prohibited conduct in amended subsection (b). In providing in subsection (c) that "[a]n offense under this section is a Class C misdemeanor," the legislature clearly intended the prohibited conduct described in subsection (b) to be punishable as a class C misdemeanor. Because the intent of Senate Bill 813 was not to the contrary, we believe that the two bills can be harmonized² and that subsection (c) of section 14 should read as follows: "An offense under this section is a Class C misdemeanor." Therefore, we conclude that the class C misdemeanor penalty set forth in subsection (c) is not limited to offenses under subsection (a).³

¹See *infra* note 3 discussing subsection (f).

²Laws relating to the same subject should be harmonized and effect given to each if possible; repeals by implication are not favored. *Gordon v. Lake*, 356 S.W.2d 138, 139 (Tex. 1962). Cf. Gov't Code § 311.025(b) (amendments to same statute enacted in same session without reference to each other shall be harmonized if possible; if amendments are irreconcilable, latest in date of enactment prevails).

³The Seventy-third Legislature clearly intended a violation of subsection (b) to be punishable as a class C misdemeanor. Subsection (f) of section 14 was enacted by the Seventy-fourth Legislature as chapter 680. See Act of May 29, 1995, 74th Leg., R.S., ch. 680, § 1, 1995 Tex. Gen. Laws 3655. The text of chapter 680 merely adds subsection (f) and does not reproduce subsection (c). The legislative history of this 1995 amendment is silent with respect to the scope of subsection (c). Given our

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Subsection (c) of section 14 of the Plumbing License Law, V.T.C.S. art. 6243-101, should read as follows: "An offense under this section is a Class C misdemeanor." The class C misdemeanor penalty set forth in subsection (c) is not limited to offenses under subsection (a).

Yours very truly,

A handwritten signature in cursive script, appearing to read "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee

(footnote continued)

interpretation of the intent of the 1993 amendments, *see supra*, a violation of subsection (f) is punishable as a class C misdemeanor.